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AT&T

Robert H. Castellano
Director
Federal Government Affairs

Room 1133M1
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Basking Ridge, NJ 07920
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September 24, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, NW - Room 222
Washington, DC 20554

Re: Exparte CC Docket No. 96-128
Payphone Compensation

Dear Mr. Caton:

A meeting was held today between AT&T, represented by Rich Rubin and me, with Bob Spangler of the Consumer Protection Branch, to discuss AT&T's views in this proceeding. In particular, we reviewed AT&T's position as to the proper rate of compensation, and its position on the issue of the provision specific ANI digits for the identification of payphones. Materials used for the discussion are attached.

Two (2) copies of this letter are being submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(1) of the Commission's rules.

Sincerely,

R H Castellano
(MA)

Attachments (2)

cc: B. Spangler
J. Muleta

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PRIORITY MEMORANDUM

Date: September 4, 1997

To: Technical Management Committee
National Services Advisory Committee
Technical Billing Subcommittee
Billing Advisory Team
Operator Services Subcommittee
Network Planning Subcommittee

From: Paul K. Hart

Subject: Implementation of FCC Docket 96-128 Provisions

File: 12.4.1.15.3.1

Please take note that this memo addresses a number of issues that may affect all of USTA's members in a significant manner. The memo has two purposes:

1) To advise USTA members of the capabilities that the Subject Order requires and some of the issues that remain concerning these capabilities.

2) To request input from USTA members as to their capabilities and views on these issues.

Quoted following is the complete text of Paragraph 64 of the FCC's Order on Reconsideration in CC Docket Nos. 96-128 and 91-35, Released November 8, 1996, FCC 96-439.

> "64. In response to requests that we reconsider our conclusions about the definition of "payphone," we make a brief clarification. For the first year of the payphone compensation mechanism, when compensation is paid on a flat-rate basis, the definition of "payphone," for compensation purposes, will be the one that we established in the Second Report and Order in CC Docket No. 91-35, along with the alternative verification procedures. Once per-call compensation becomes effective, we clarify that, **to be eligible for such compensation, payphones will be required to transmit specific payphone coding digits as a part of**

their ANI, which will assist in identifying them to compensation payors. Each payphone must transmit coding digits that specifically identify it as a payphone, and not merely as a restricted line. We also clarify, pursuant to a request by MCI, that LECs must make available to PSPs, on a tariffed basis, such coding digits as a part of the ANI for each payphone. We decline to require PSPs to use COCOT lines, as suggested by the RBOCs, because we have previously found that COCOT service is not available in all jurisdictions." Footnotes omitted, emphasis added.

Careful reading of this paragraph indicates that some of its expectations are inconsistent with current industry capabilities or will be very difficult and expensive to accomplish. First among them is that it would invalidate the meaning of 07 as ANI ii digits provided to IXCs for lines serving payphones. This is part of the structure for basic ANI provision which is hard coded in equal access switches.

In subsequent actions, certain aspects of the payphone compensation rules have been vacated or remanded to the Commission for further action, but the technical aspects of the network were not among the issues that were appealed. What we are facing is that the per-call compensation provisions are due to become effective on October 7, 1997, and we believe that the network capabilities to support the requirements stated in Paragraph 64 are not available and cannot be made available by October 7th.

We believe that it is the intent of the Commission to require that LECs provide the IXCs with information necessary for the IXCs to register subscriber 800 and access code calls[1] as being qualified to receive per-call compensation by October 7th. We also believe that the payphone service provider (PSP), not the IXC, will have to be billed for the service. Take note that in Paragraph 64 above, no mention is made of Originating Line Number Screening (OLNS)[2] as an acceptable method for provision of this information, and some of the IXCs have stated that it is not. We also believe that some IXCs will not be able to properly process OLNS queries by October 7, even if the database responses could be delivered by that time.

We are generally aware of the limitations of USTA's members to provide the ANI ii digits addressed in paragraph 64. We have previously circulated copies of a filing detailing those conditions - please call Jennifer Sbahi at 202-326-7294 if you would like to receive a copy for reference. At this

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[1] Special conditions apply to 0+ calls dialed from payphones operated by Bell Operating Companies. The option to place access code calls does not exist absent equal access.

[2] The FCC, in its documentation, refers to Originating Line Screening (OLS) which, unlike OLNS, is a generic term encompassing many methods for verifying line conditions.

time, we do not know if our members have the capabilities to track the provision of ANI ii information supplied to the IXCs for the purpose of per call compensation, and then to bill the PSPs for its provision. In the event that OLNS is permitted and used, the LEC would then presumably count the provision of ANI 07 as the first stage in a sequence, and the OLNS query-response step would follow to provide the specific information needed.

It is also possible that provision of ANI lists for payphones could permit IXCs to make a determination after the call as to which payphones qualify for per-call compensation. At USTA, however, we are not aware if this is currently being done, if it is not done whether it is feasible and the cost and time burdens that would be incurred in order to implement such capabilities. The last page of this memo is a questionnaire that we ask our member companies to use to advise us concerning these issues. A consolidated response from each USTA member company receiving this memo would be most helpful. **This memo is also a call to action for the Technical Billing Subcommittee to work these issues on behalf of USTA's members in conjunction with staff so that we have knowledge of our members' capabilities in contacts with the FCC.**

Address of the Questionnaire

For a considerable time, a group of representatives of large USTA member companies including representatives from their payphone operations, collectively known as the Ad Hoc LEC Coalition, has been working these issues among themselves and with the FCC. Our focus here is to inform and to obtain information from USTA members that are not involved in the coalition activities. In an ongoing attempt to maintain consistency, however, the companies that are members of the coalition are invited to participate in this activity and will be informed of our communications.

This information is not directed to all USTA members, but primarily to those who are members of committees within the USTA structure. This is in an attempt to direct the questionnaire to a group that is already familiar with these issues and to obtain some insights concerning these capabilities before addressing the entire USTA membership.

The faster you can respond to this questionnaire, the better. Thanks.

Hart

cc: Regulatory Issues Advisory Committee
Small Company Committee

Four USTA Committees
Provision of Data to Support Per-Call Compensation
to Payphone Service Providers

September 4, 1997

Mid-Size Company Committee
Mary McDermott
Keith Townsend
Hance Haney
David Cohen
John Hunter
Larry Clinton
Technical Disciplines Staff

Please Reply by September 15, 1997

USTA Questionnaire Concerning Provision of Information to Interexchange Carriers to Support Per-Call Compensation

Company Name____

Company Location____

Contact Name for Further Information______________________________

Mailing Address____

Phone____________________Fax____________________ E-mail__________________

Does your company provide service to payphones that are owned by Payphone Service Providers (PSPs) other than the serving telephone company?____________________.

For equal access end offices, do you now, or do you intend to have the capability to transmit ANI ii digit pairs 27, 29 and 70 in accordance with industry definitions to identify payphones? (The ANI ii digit pairs 29 and 70 are provided by a carrier-specific capability known as "Flex ANI". See USTA TD Dispatch No. 96-122, dated 11/1/96 for digit pair definitions). If so, when will this be available?___________.

If you cannot provide these digits, do you provide ANI ii digits 07 and 27?__________________.

If permitted, do you intend to rely on Originating Line Number Screening (OLNS) for provision of information necessary to qualify calls for payment of per-call compensation?____________________.

If you do intend to use OLNS, when will the capability be available?________________________.

Do you have the technical capability to track the provision of information (ANI ii or OLNS) to IXCs and bill the Payphone Service Provider (PSP) for it directly?______________. If so, has a tariff been filed by your company or on your behalf to establish the rate for such provision?____________________.

Do you now or do you intend to provide information to IXCs in electronic form (usually every 30 days) showing the line numbers for each payphone and information on the line to which it is connected?________________. If you do intend to provide this capability in the future, please provide a date by which you estimate it will be available__________________.

Please respond to Vern Junkmann by September 15th at USTA by Fax at 202-326-7333. Questions concerning this matter can be directed to Vern Junkmann at 202-326-7298, Tony Pupek at 202-326-7296 or Paul Hart at 202-326-7291.

Facsimile Cover Sheet

To: Leonard Sawicki
Company: MCI
Address Washington, DC
Phone: 202/872-1600
Fax: 202/887-2676

From: R. H. Rubin
Company: AT&T/295 N. Maple Ave., Room 3252I3
Phone: 908/221-4481
Fax: 908/953-8360/62/63

Date: 9/12/97
Pages including this cover page:

Comments:

FYI, the USTA Letter.

AT&T Ex Parte Presentation
CC Docket No. 96-128
September 24, 1996

I. THE ONLY REASONABLE BASIS TO USE IN SETTING THE COMPENSATION FOR COINLESS CALLS IS THE PSPs' COSTS FOR SUCH CALLS

All of the Commission's previous decisions used costs to determine "fair" compensation for PSPs.

"Fair" in the context of the Communications Act must encompass the rights of consumers as well as PSPs and carriers.

The so-called "market-based" approach to compensation in the Payphone Orders is a misnomer.

The only basis for establishing the compensation rate at 35 cents was the erroneous assumption that the costs of compensable coinless calls are equivalent to the costs of local coin calls.

The Court of Appeals focused only on the costs of different types of payphone calls and never sanctioned the use of a market rate for payphone compensation.

In its analysis, the Court used the term "market" only in its discussion of the Commission's authority to deregulate rates for local coin calls. The Court did not use the word "market" even one time in its discussion of the 35 cent default compensation rate. In particular, the Court expressed no opinion as to whether market-based compensation could be "fair."

The Court's Opinion (pp. 14-15) stated "[t]he FCC decided that the compensation rate for 800 and access code calls should be equal to the deregulated local coin rate. The FCC rested this conclusion on one ground -- that the costs of coin calls, 800 calls, and access code calls are similar (emphasis in original)". The Opinion cites three specific references from the Commission's decisions which support the Court's finding.

The Court's Order on Motion for Clarification (p. 3) again focuses solely on the fact that the Commission "set the compensation rate for subscriber 800 and access code calls at the deregulated coin rate because of the supposed similarity in the <u>cost</u> of originating the various types of payphone calls (emphasis added)".

The D.C. Circuit (<u>id</u>.) further refutes the notion that the Commission could reach the same conclusion on remand, stating "[w]e infer that, if it were possible to reconcile the evidence with the agency's decision, the FCC would at least have attempted to do so." The Commission's failure to do so rendered its decision arbitrary and capricious and "leaves the Court with no basis for allowing the $.35 rate to remain in place pending further consideration on remand."

The evidence presented on remand raises significant questions as to whether a deregulated local coin rate equals a market-based rate for such calls.

Consumer commenters demonstrate that "deregulated" local coin rates are not necessarily competitively priced and indeed reflect a <u>monopoly</u> price.

PSPs agree that the economics of the payphone industry are driven by coin calls, which represent over 70% of all calls from payphones.

The newly-granted pricing flexibility given to PSPs for coin calls assures, for the first time, that PSPs will be able to recover their coin-related costs in coin rates.

The PSPs' own arguments show that they understand PSPs have <u>monopoly</u> power over carriers of coinless calls.

PSPs urge the Commission to rely upon relative demand elasticities ("Ramsey pricing" principles) in setting the compensation rate for coinless calls, but Ramsey pricing <u>assumes the existence of monopoly power over two different products</u>.

If the market for local coin calling is competitive, using Ramsey pricing principles to set the payphone compensation rate for coinless calls would <u>guarantee monopoly pricing</u> for such calls.

Carriers' right to block calls from excessively priced payphones does <u>not</u> demonstrate that there is a "competitive" market between PSPs and carriers unless carriers can implement blocking without significant costs or have alternative sources of supply to the

PSPs' payphones.[1] However, the record shows that blocking is very costly and there are no feasible sources of supply for current payphone traffic.

Unlike local coin callers, who can simply walk away from an excessively priced payphone, carriers cannot refuse to handle calls from all such phones unless they:

(i) have implemented costly infrastructures which enable them to block calls;

(ii) receive real-time information identifying a call as originating from a payphone;

(iii) have advance information regarding the compensation rates for calls from a specific payphone; and

(iv) are willing to incur negative goodwill from callers whose calls are blocked.

In sum, PSPs seek to recover higher compensation for providing fewer functions for originating coinless calls they do not provide to end users, so they can charge proportionally less for the greater number of functions they must perform in originating and completing the local coin services they do provide. This could not happen if PSPs and carriers had relatively equal bargaining power and carriers had alternative sources of supply to the PSPs' payphones.

It is both unlawful and economically irrational to base compensation for the origination of coinless calls on the costs of originating and completing local coin calls.

The D.C. Circuit explicitly held that it is arbitrary and capricious to conclude that the costs of the different types of payphone calls are similar.

From an economic perspective, local coin calls and coinless toll calls are not related (i.e. generally

[1] The Court of Appeals (p. 16) only stated that "the IXC's potential to block calls gives them some leverage to negotiate (emphasis added)," not that blocking would generate equal bargaining power. Moreover, the Court (p. 17) recognized that "blocking is hardly an ideal option for the IXCs."

substitutable) products, because they have no cross-elasticity in demand.

The record reflects significant ways in which PSPs' costs to provide all aspects of local coin calls are higher than their costs to originate coinless toll calls. Thus, contrary to PSPs' assertions, coinless calls do not share significant joint and common costs with local coin calls, because many costs of operating a payphone are attributable solely to coin calling.

The Commission's hopes for actual and efficient competition for local coin rates can only come to fruition if all of the costs of local coin calls are required to be recovered in the rates for those calls. If compensation for coinless calls is used to subsidize the pricing for local coin calls, it is counter to the statutory intent to eliminate subsidies and it will also distort competition in the local coin market by dampening PSPs' incentives to operate efficiently.

TELRIC pricing principles can and should be applied in this context.

TELRIC (or TSLRIC) pricing principles can be applied under all production circumstances. They do not require that there be significant economies of scale and scope, or that there are a specific amount of joint and common costs.

In the payphone context, the dial-around capabilities of a payphone are an effective bottleneck for providers of coinless services, because such carriers cannot costlessly prevent callers from accessing their networks from payphones, and thus impose payphone usage charges upon them. TELRIC is the appropriate methodology to use to establish the mandatory charges carriers must pay in such cases.

AT&T's TELRIC-based proposal is particularly appropriate here, because:

(i) PSPs are now assured that they can recover all coin-related costs in their rates for coin calls, which are deregulated and no longer tied to PSPs' costs;

(ii) PSPs typically receive 0+ commission rates that are significantly higher than their costs of handling such calls; and (iii)AT&T's proposal is not based on a purely marginal "wear and tear" analysis; rather, it takes into account all costs PSPs incur in originating coinless calls from their payphones, including the cost of the basic payphone line.

Thus, AT&T's TELRIC-based compensation rate for dial-around and 800 subscriber calls enables PSPs to recover "fair" compensation on every call, and significantly more than their total costs.

Carriers have demonstrated that cost is the only viable basis for a "market-based" compensation level.

Carriers have indicated they would "willingly" pay a cost-based amount to receive calls from payphones. They object only to a scheme that will enable PSPs to earn supracompetitive profits in circumstances where PSPs exercise significant market leverage.

In all events, the customer commenters demonstrate that a market-based approach is not "fair" to consumers, who must bear the burden of the excessive costs that would result from a non-cost-based approach.

II. The "Surrogates" Proposed By PSPs Have No Relationship To PSPs' Costs Or To The "Market Value" Of Dial-Around Or 800 Subscriber Calls

0+ commissions bear no relationship to the value of dial-around access code calls or 800 subscriber calls

The Commission has already recognized that 0+ commissions are marketing payments that cover much more than a PSPs' costs in originating coinless calls. These include the value of advertising at the payphone and the value of receiving calls that would otherwise never have been directed to the carrier paying such commissions.

0- transfer charges are based on LECs' (not PSPs') costs for live operator assistance on a relatively small proportion of calls, and such calls may also direct new traffic to the receiving carrier.

Carriers' surcharges for coin calls reflect the carriers' own costs for maintaining their operator services networks, *not their costs (or any PSP's costs) of operating a payphone.*